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COMMENTARY

Irony only sure bet on the outcome of Amendment 2

Looking for an irony in the U.S. Supreme Court's announcement this week that it will review Amendment 2?

Consider this: Colorado Springs, a community that seems to stand for home rule, has put the nation's highest court in a position to tell everybody in the country what to do about gay rights laws. Because when we trace the roots of the ballot initiative, it all started here.

RAYMOND McCAFFREY

It's hard to track down exactly when an idea starts. But probably a good place to begin the story is in 1987, when a professor named John Miller arrived here to become head of the Languages and Cultures Department at the University of Colorado at Colorado Springs.

Miller is gay. He soon placed a notice in local gay and lesbian newspaper and held a meeting at his house. The subject: how to persuade the city to pass a law addressing gay rights.

Well, that idea picked up steam, and in 1991 the city's Human Relations Commission came up with an anti-discrimination proposal that covered gays, among others. The City Council, considering all the opposition the measure stirred up, said no, thank you. Denver had one of those laws. So did Boulder. And Aspen, too. But not in Colorado Springs. Home rule — the principle that local communities are best equipped to decide what's right for them — won out.

Yet, as we know, the debate didn't stop there. Although the Human Relations Commission's proposal was shot down, opponents continued their fight statewide and formed Colorado for Family Values. The result was Amendment 2, which would ban laws protecting gays from discrimination based on their sexual orientation. The owner of a local car dealership, Will Perkins, became the group's most prominent spokesman.

"I had no idea what I was getting into," Perkins said Thursday. "I thought we'd have an election . . . and we'd get back to what we were doing."

Well, the debate went on and on. Nobody was able to agree on what exactly Amendment 2 was about. Was it about hate and discrimination? Was it about denying special rights to homosexuals? Whatever it meant, the amendment passed in November 1992.

Enter Professor Miller again. After the election, he was recruited to join a group of plaintiffs challenging Amendment 2.

Of course, in the meantime, the ballot initiative was causing an uproar across the country. Some were calling for boycotts of the "Hate State." Others were drafting Amendment 2-type measures to put before voters in their own states.

Amendment 2 took a beating in court. In December 1993, Denver District Court Judge Jeffrey Bayless ruled Amendment 2 was unconstitutional. Bayless made special note of a passage from an earlier ruling on Amendment 2, which noted: "One's right to life, liberty, and property . . . and other fundamental rights may not be submitted to vote."

The decision was appealed to the Colorado Supreme Court, which in October 1994 agreed with Bayless. Now the U.S. Supreme Court will weigh in.

Amendment 2 backers see that as a good sign, considering that if the majority of justices agreed with the lower-court decision they could have just let it stand.

"The very fact that they took the case and agreed to take it is a strong indication that they're going to rule in our favor," Perkins said. Not surprisingly, his opponents think it's not so cut and dried.

Whatever the decision, it's sure to have an impact on gay rights laws and Amendment 2-like measures throughout the country. And that suggests more ironies for the local folks who helped make this all possible.

For instance, if the court supports Amendment 2, that lays the groundwork for similar ballot initiatives throughout the country. That would be the exact opposite effect John Miller was after when he tried to get gays included in a local anti-discrimination law.

On the other hand, what if the nation's highest court finds Amendment 2 unconstitutional? That would mean that Colorado for Family Values' long fight will have actually ended up crippling nationwide efforts to fight gay rights laws.

Indeed, the stakes are so high that to lose now is to lose big. Of course, the same is true for winning.

Raymond McCaffrey's column appears Monday, Wednesday and Friday.

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